

OPINION
78-9

August 21, 1978 (OPINION)

Mr. Albert J. Hardy
Stark County States Attorney
P.O. Box 370
Dickinson, North Dakota 58601

Dear Mr. Hardy:

This is in response to your letter of August 15, 1978, with regard to whether a city's annexation of territory will effect legislative district apportionment.

You call to our attention paragraphs numbers 37 and 38 of Appendix A shown in the footnote to the 54-03-01.6 heading in the 1977 Supplement to the North Dakota Century Code, in terms as follow:

"37. The thirty-seventh legislative district shall consist of the City of Dickinson in Stark County.

"38. The thirty-eighth legislative district shall consist of Hettinger and Adams Counties and all of Stark County except those portions contained in the thirty-seventh and thirty-ninth legislative districts."

Your letter states that:

"In recent years a substantial amount of property has been annexed to the City of Dickinson."

Your question is stated as:

"Whether the 37th legislative district has been enlarged by recent annexations of property to the City of Dickinson."

While "The Municipal Annexation Act of 1969" (see Chapter 40-51.2 of the 1977 Supplement to the North Dakota Century Code) has various references to the interrelationship and interdependence between a municipal corporation and areas contiguous or adjacent thereto, the economic, physical and social relationships to school districts and other political subdivisions, etc., and does recognize petitions, hearings, etc., involving the local inhabitants, it contains no reference to votes available for legislative representation, the so called "one man, one vote rule," etc.

The original and amended Section 35 of the North Dakota Constitution delegated the apportionment authority to the legislative assembly and/or, in appropriate situations, a designated board. Also as may be noted in the footnotes to the 54-03-01.6 heading the 1977 Supplement to the North Dakota Century Code due to the "one man, one vote rule" we may have had something quite close to judicially ordered legislative apportionment. There has, however, been no delegation of legislative apportionment authority to municipal

annexation commissions and boards.

The quoted language of paragraph numbered 37 of our present legislative apportionment does not specify whether it refers to the city as it exists as of the date of the order, or whether it refers to the city as it may exist and may be enlarged or diminished in the future.

Considering the factors heretofore outlined, it is our opinion that the legislative assembly and/or the courts applying the constitutional apportionment rules, are not authorized to and did not intend to delegate any legislative apportionment authority to city annexation boards or commissions. On such basis we must conclude that the thirty-seventh legislative districts consists of the territory occupied by the City of Dickinson as of the date of that appointment order. Our answer to your question must be that the 37th legislative district has not been enlarged by recent annexations of property to the City of Dickinson.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely,

Allen I. Olson

Attorney General